

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

EPCON COMMUNITIES CAROLINAS, LLC,
and EPCON FARRINGTON LLC,

Plaintiffs,

v.

IRIS M. TILLEY, individually and as Trustee;
THOMAS E. TILLEY, individually and as Trustee;
MELBA GEORGE, individually and as Trustee;
BARBARA WRIGHT, individually and as Trustee;
and UNITED STATES OF AMERICA,

Defendants,

1:11CV643

MEMORANDUM OPINION AND ORDER OF
UNITED STATES MAGISTRATE JUDGE

This is an action by Plaintiffs Epcon Communities Carolinas, LLC, and Epcon Farrington, LLC (“Plaintiffs”) seeking to quiet title to property that Plaintiffs purchased from certain trusts affiliated with Defendants Thomas Tilley and Iris Tilley (“the Tilleys”). The Tilleys are the subject of a federal tax dispute, and the Internal Revenue Service (“IRS”) has filed Notices of Federal Tax Lien relating to the Tilleys and the trusts from whom Plaintiffs acquired the property. Plaintiffs seek a determination that the lien claimed by the IRS, if valid, would apply to the proceeds of the trusts’ sale of the property and not to the property itself.

Plaintiffs filed their original Complaint in state court, naming as Defendants the Tilleys; the United States of America; and Barbara Wright and Melba George, who were associated with the various trusts. The case was removed to this Court by the Defendant United States of America pursuant to 28 U.S.C. § 1442, which allows for removal of a civil action commenced

in state court against the United States or any agency thereof, and pursuant to 28 U.S.C. § 1444, which allows removal of actions seeking to quiet title to property on which the United States has a lien. The United States subsequently filed an Answer. The Tilleys filed a *pro se* “Response” [Doc. #16] that may have been an attempt to file either a Motion to Dismiss or an Answer. Shortly after the Tilleys filed their “Responses,” Plaintiffs filed an Amendment to Complaint [Doc. #18]. The United States filed an Amended Answer and Counterclaim [Doc. #21]. The Tilleys thereafter filed another “Response” [Doc. #22], challenging the authority of the United States Government and the validity of the United States Constitution. Defendant Barbara Wright subsequently filed an Answer and Crossclaim. Defendant Melba George has not yet filed any Answer or other response, although she previously requested an extension of time to file an Answer as to the original Complaint.

In reviewing the docket in this case, the Court notes that to the extent that the Tilleys’ original “Response” was docketed as a “Motion to Dismiss,” the filing of an Amended Complaint mooted any motion to dismiss as to the original Complaint, and the Amended Complaint is now the operative pleading. See Young v. City of Mount Ranier, 238 F.3d 567, 572 (4th Cir. 2001). Moreover, it is unclear whether the Tilleys’ “Responses” were an attempt to file an Answer or a Motion to Dismiss. Therefore, the Tilleys will be given 21 days following the entry of this Order to file an Answer or Motion to Dismiss, or otherwise respond to the Amended Complaint. If the filing is intended as a Motion to Dismiss, it should clearly be labeled as such. Any filing must comply with the Federal Rules of Civil Procedure and the Local Rules of this Court. Likewise, Defendant Melba George is given 21 days following the entry of

this Order to file an Answer or other responsive pleading in accordance with the Federal Rules of Civil Procedure and Local Rules of this Court.

Finally, having reviewed the various filings in this matter, the Court concludes that this case should be set for an Initial Pretrial Conference pursuant to Federal Rule of Civil Procedure 16, in order to address and manage the course of these proceedings and to move this matter forward. Therefore, this case will be set for an Initial Pretrial Conference on May 24, 2012 at 9:30 a.m. All parties must file a report pursuant to Federal Rule of Civil Procedure 26(f), either jointly or individually, in accord with the Local Rules of this Court.

IT IS THEREFORE ORDERED that Defendants Thomas Tilley, Iris Tilley, and Melba George are given 21 days from the entry of this Order, to and including May 22, 2012, to file an Answer, Motion to Dismiss, or other responsive pleading with respect to Plaintiffs' Amended Complaint. Any filing must be clearly labeled and must be filed in compliance with the Federal Rules of Civil Procedure and the Local Rules of this Court.

IT IS FURTHER ORDERED that the Clerk is directed to set this case for an Initial Pretrial Conference on Thursday, May 24, 2012 at 9:30 a.m.

This, the 1st day of May, 2012.

/s/ Joi Elizabeth Peake
United States Magistrate Judge